

UNITED STATES DISTRICT COURT

**DISTRICT OF NEVADA**

11 ROBERTO DURAND, )  
12 Petitioner, )  
13 v. )  
14 STATE OF NEVADA, et al., ) **ORDER**  
15 Respondent. )  
16 )

17 This apparent 28 U.S.C. § 2254 action has not been properly  
18 commenced as petitioner filed only an application for leave to proceed  
19 *in forma pauperis* with no accompanying petition. It does not appear  
20 that a dismissal without prejudice would materially impact application  
21 of the limitations period or otherwise cause substantial prejudice.<sup>1</sup>  
22 Accordingly, this improperly commenced action will be dismissed  
23 without prejudice.

1        It therefore is ordered that this action shall be dismissed  
2 without prejudice. Petitioner shall file any petition, and either pay  
3 the filing or fee or submit a complete pauper application, in a new  
4 action only, and shall not file any more documents in this case.

5        It further is ordered that a certificate of appealability is  
6 denied. Jurists of reason would not find debatable whether the court  
7 was correct in its dismissal of the action without prejudice on  
8 procedural grounds, for the reasons discussed herein.

9        It further is ordered, pursuant to Rule 4 of the Rules Governing  
10 Section 2254 Cases, that the clerk shall make informal electronic  
11 service upon respondents by adding Nevada Attorney General Adam P.  
12 Laxalt as counsel for respondents and directing a notice of electronic  
13 filing of this order to his office. No response is required from  
14 respondents other than to respond to any orders of a reviewing court.

15       The clerk shall send petitioner a copy of his papers in this  
16 action, along with two copies each of the forms and instructions for  
17 an inmate pauper application and § 2254 habeas petition.

18       Petitioner is advised that he must submit a pauper application  
19 or pay the filing fee at the same time he files a petition, or the  
20 action may be considered improperly commenced.

21       The clerk shall enter final judgment accordingly, dismissing this  
22 action without prejudice.

23       IT IS SO ORDERED.

24       DATED: This 17<sup>th</sup> day of August, 2018.

25 

26        HOWARD D. MCKIBBEN  
27        UNITED STATES DISTRICT JUDGE  
28